



June 1, 1999

Mr. Robert S. Martin  
Director and Librarian  
Texas State Library & Archives Commission  
P.O. Box 12927  
Austin, Texas 78711-2927

OR99-1503

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124823.

The Texas State Library and Archives Commission (the "commission") received a request for "the medical and personal files of the women who stayed at the Confederate Women's Home in Austin from 1908 to 1963." You assert that the residents' medical records are made confidential by the Medical Practice Act and therefore are excepted from required public disclosure under section 552.101 of the Government Code. You have submitted a representative sample of the medical records to this office for review.<sup>1</sup> We assume that you have released the remainder of the requested information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. The Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, section 5.08(b) provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). We agree that the submitted records are confidential medical records. Open Records Decision No. 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). Thus, the commission must release this information only in accordance with the MPA. Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b, § 5.08 (c), (j), (k).

You ask whether you may release the medical records to the requestor who is doing historical research. Section 5.08(d) provides that the "prohibitions of this section continue to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a physician, except for medical records 100 years old or older requested for historical research purposes." The requestor seeks records from 1908 to 1963. Thus, the records at issue are not 100 years old or older. Consequently, section 5.08 prohibits the release of the medical records at issue, even for historical purposes. *See* Attorney General Opinion JM-229 at 4 (1984) (because of statutory confidentiality mandated by MPA, custodian of records may not adopt policy of disclosing protected records certain number of years after records are generated or compiled despite importance of records to genealogical research).

Lastly, the requestor argues that privacy is not an issue because some of the residents are deceased. While the right of privacy lapses upon death, Attorney General Opinion JM-229 at 3 (1984), the confidentiality accorded to information in medical records by the MPA does not lapse upon the death of the patient. *Id.* at 4. Therefore, you must withhold the requested medical records.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 124823

encl.: Submitted documents

cc: Ms. Julie S. Allison  
2211 Lawnmont, #202  
Austin, Texas 78756  
(w/o enclosures)